GOVERNMENT OF MALAYSIA v. ABDUL RAHMAN

[A.C.J. (Arulanandom J.) November 25, 1974]
[Ipoh — Civil Suit No. 219 of 1974]

Income Tax — Assessment of tax and additional tax for 12 years — Suit for payment of tax — Application to sign final judgment — R.S.C. 1957, O. 14 — Income Tax Act, 1967, ss. 103(1) and 106.

Practice and Procedure — O. 14 — Income Tax Act, 1967.

In this case the defendant had been assessed to pay income tax and additional income tax for the years 1962 to 1973 and on his failure to pay the amount claimed, the Government instituted a suit against the defendant and applied for leave to enter final judgment. The Assistant Registrar gave leave to the plaintiff and the defendant appealed.

Held: dismissing the appeal; in this case the court could not entertain any plea that the tax or additional tax was not correctly assessed and therefore the leave to sign final judgment must be confirmed.

Cases referred to:-

(1) *A.B.C.* v. *The Comptroller of Income Tax, Singapore* [1959] M.L.J. 162.

(2) *Sun Mun Tobacco Company Ltd.* v. *Government of Malaysia* [1973] 2 M.L.J. 163.

CIVIL SUIT.

Zulkifli bin Mahmood (Senior Federal Counsel) for the plaintiff.

W. E. Balasingham for the defendant.

Arulanandom J.: In this case the plaintiff, the Government of Malaysia, instituted a suit against the defendant for the recovery of $906,657.58 and interest at the rate of 6% per annum being additional income tax raised on the defendant for the years 1962 to 1973. The Notices of Assessment for the said years totalling $824,234.21 respectively were duly posted and served on the defendant and as the defendant failed to pay the said sum within thirty days after service of the Notices of Assessment, an additional 10% increase was respectively added to the tax pursuant to the provisions of section 103(4) of the Income Tax Act, 1967. The said Notices of Assessment were dated 11th May, 1974. The suit was filed on the 17th July, 1974 and on the 27th July, 1974 the defendant entered appearance through his solicitors. On the 12th day of August, 1974 the defendant entered his defence and among other things claimed that he was not liable to pay any of the said additional tax or increased assessment imposed. He claimed there were no additional amounts of chargeable income upon which any additional assessment could be made or due. He further claimed that the Director General had erred in making and imposing the additional tax and penalties and also that the calculations on the gross takings for each day concerned were wrong as he also incurred expenditure in purchase of various articles. He further stated that he had appealed to the Special Commissioners of Inland Revenue but the matter was not yet heard. On the 12th day of September, 1974 the plaintiff applied by way of Summons-in-Chambers for leave to sign final judgment and on the 25th September, 1974 the Senior Assistant Registrar gave leave to the plaintiff to enter final judgment. Against this decision the defendant now appeals and his grounds for appeal are that section 103(1) and section 103(4) of the Income Tax Act are only applicable to tax due and payable on a Notice of Assessment for the current year and not for twelve years at a stretch. He also states that the additional income tax increases and penalties are too fantastic and most unreasonable. To the submission in the affidavit of the plaintiff that under the provisions of section 103(1) of the Income Tax Act tax was payable notwithstanding any appeal against the assessment, the defendant states that section 103(1) is not applicable in this case and section 106(3) too is not applicable in this case. He further states there is a triable issue and a good defence in his action. In his submission before me counsel for the defendant further argued that this assessment is not final under sections 97(1)(a) and 97(1)(c). He submitted that since there was no finality in the assessment especially in this case where the assessment was for twelve years the Director General could not issue a certificate under section 142(1) because there was no finality of the assessment. He argued that section 142 should be read with section 97(1)(a) and (c) and section 91(1). Counsel suggested that if judgment was given before the matter was heard by the Special Commissioners and execution levied there will be real hardship to the defendant and the plaintiff will be unable to restore the status quo if the Special Commissioners were to decide on a lesser amount. He cited the recent case of *Sun Man Tobacco* where the original claim was for $1,320,440.15 and was later reduced to $1,006,000.00. Counsel stressed that all authorities were for only one year of assessment and therefore he should be given unconditional leave to defend.

When proceedings are commenced under O.14 the normal rules for triable issues do not apply to cases of this nature because of the provisions of the Income Tax Act. Normally when defence raised triable issues it is a rule of law that unconditional leave to defend should be given but under section 106(3) of the Income Tax Act it clearly states that in any proceedings commenced by the Government under section 106(1) of the Act for the recovery of tax by civil proceedings as a debt due to the Government the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under section 103(4) or (5). In this case the Director General had exercised his powers under section 91(1) of the Act and made additional assessments and added penalties which were provided for by the Act. Since the amount was not paid within thirty days further penalties were added and since that was not paid civil proceedings were brought to recover the tax as a debt due to the Government. Under section 103(1) regarding payment of tax, the section reads:—

"103.(1) Subject to this section, tax payable under an assessment for a composite assessment shall on the service of the notice of assessment or composite assessment on the person assessed be due and payable at the place specified in that notice whether or not that person appeals against the assessment or composite assessment, as the case may be."

It is therefore quite clear that the Act does not contemplate any finality of assessment as it is clearly required in the Act that the moment the Notice of Assessment is served on the taxpayer the tax becomes payable whether the taxpayer appeals against the amount or not. Therefore I do not see any merit in defendant's argument that the assessment was not final. Again regarding the defendant's complaint that these Notices of Assessment were for twelve years I can see

no merit in it because when the Director General exercises his powers under section 91(1) and imposes the additional assessment for twelve years the same provisions under section 103 for payment of tax is applicable and there is no distinction between the assessments being for one year or for twelve years. Again I see no merit in the argument that the certificate under section 142(1) cannot be given because there is no finality. Under section 106 tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government and in a suit under section 106 the production of a certificate signed by the Director General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

In this case after the Notices of Assessment were served and the tax was not paid the Government instituted proceedings for the whole tax payable. The court under section 106(3) cannot entertain any plea that the tax or additional tax was not correctly assessed. In the case of *A.B.C.* v. *The Comptroller of Income Tax, Singapore*[1] it was held that notices of assessment for several years were valid. Regarding the question whether triable issues or objections to the tax entitled the defendant to leave to defend I only need to refer to the recent Federal Court decision in *Sun Man Tobacco Co. Ltd.* v. *Government of Malaysia*[2] where it was held that the court was right in giving leave to the Government to sign final judgment and in holding that if the taxpayer wished to dispute that the amount of tax sought to be recovered was excessive, incorrectly assessed, under appeal or incorrectly increased, he had to do so by way of appeal to the Special Commissioners.

In the circumstances the appeal will be dismissed and the leave to sign final judgment confirmed with costs.

I hereby certify that I do not require any further argument.

Appeal dismissed.

Solicitors: *Gibb & Co.*

POOMANI v. ASSOCIATED FINANCE CORPORATION SDN. BHD.

[O.C.J. (Wan Hamzah J.) November 26, 1974]
[Ipoh — Civil Suit No. 752 of 1968]

Contract — Advance of money to third party which benefits party — Right to recover money — Retention of title deeds — Equitable assignees of mortgage — National Land Code, s. 281.

Land Law — Retention of title deeds for purpose of creation of lien — Equitable assignee — National Land Code, s. 281 — Contracts Act, 1950, s. 71.

In this case the facts were that the defendants had advanced $7,000 to the plaintiff and the plaintiff thereupon paid off her loan to the Malaya Borneo Building Society Ltd. and discharged her land from the charge to the society. The plaintiff and the defendants executed a memorandum of agreement purportedly pursuant to the Moneylenders Ordinance and the plaintiff also executed a charge of the land to the defendants. The title deeds of the land were handed over to the defendants. The defendants had originally applied for an order for the sale of the lands to recover the loan. Subsequently, the plaintiff brought the action against the defendants for a declaration that the memorandum of agreement and the charge were unenforceable and also prayed for the delivery of the title deeds to her. The defendants in their defence denied that the agreement and charge were unenforceable and further claimed that they were entitled to retain the title deeds until repayment of the sum of $7,000. In an earlier hearing ([1972] 1 M.L.J. 117) it was held that the memorandum of agreement and the charge were unenforceable.

Held: (1) as the plaintiff had benefited by the advance of the $7,000 and the defendants had not intended to make the advance gratuitously, the defendants were entitled to recover the sum by virtue of section 71 of the Contracts Act, 1950; 1950;

(2) the defendants were entitled to possession of the title deeds for the purpose of the creation of a lien under section 281 of the National Land Code;

(3) since the money had been advanced by the defendants to pay off the money lent by the society as mortgagees, the defendants have become equitable assignees of the mortgage and were entitled to have the mortgage kept alive for their benefit and to enforce the mortgagee's rights thereunder.

Case referred to:-

(1) *Coptic Ltd.* v. *Bailey & Anor.* [1972] 1 All E.R. 1242.

CIVIL SUIT.

J. R. Devadas for the plaintiff.

W. S. W. Davidson for the defendants.

Wan Hamzah J.: The plaintiff charged her land lot No. 3713N, Town of Ipoh, held under Certificate of Title No. 29348, to the Malaya Borneo Building Society Limited (hereinafter referred to as the society) to secure repayment of a loan of money. It is not clear for what purpose the plaintiff borrowed the money or whether she used it to pay the cost of the property, but memorials on the Certificate of Title show that the land was transferred to the plaintiff and the transfer was registered on the same day (i.e. 2 September 1964) as the registration of her charge to the society. When the society called for repayment the plaintiff's husband on her behalf approached the defendants (who were licensed moneylenders) for a loan of $7,000 to settle with the society.

On 6 September 1967 a sum of $7,000 was forwarded by the defendants' solicitors to the plaintiff's then solicitors. On 11 October 1967 the said sum was paid by the plaintiff's then solicitors to the society as repayment of the loan obtained by the plaintiff from the society. The land was discharged and the discharge was registered on 17 October 1967. The plaintiff and the defendants executed a memorandum of agreement dated 2 October 1967 purportedly pursuant to the Moneylender's Ordinance 1951, and also a charge of the land dated 2 October 1967 to secure repayment of the loan of $7,000 and interest. The charge by the plaintiff to the defendants was registered on 17 October 1967. Since then the title deed for the land has been in the possession of the defendants.

By Originating Summons No. 723/1968 dated 28 September 1968 the defendants applied to the court for an order of sale of the land under sections 256 and 257 of the National Land Code to recover the loan and the plaintiff resisted the application contending that the memorandum of agreement and the charge were unenforceable because of certain facts which she alleged in her affidavit. On 18 December 1968 the